IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1338 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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UNITED INDIA INSURANCE CO.LTD. - Appellant(s)
Versus
KOLI JIVABHAI JETHABHAI & 5 - Defendant(s)

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Appearance :
MR PV NANAVATY for Appellant(s) : 1,
None for Defendant(s) : 1 - 3.
MR HA RAICHURA for Defendant(s) : 4 - 6.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 24/07/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant-Insurance Company has challenged the judgment and order of the learned Workmen's Compensation Commissioner, Junagadh (for short 'the Authority') passed in W.C. Case No.28 of 1985 dated 8th December, 1987.

2.0 The brief facts of the case are that when deceased Parbatbhai Jivabhai was proceeding

towards Keshod by driving auto-rickshaw, the right hand side wheel of the said auto-rickshaw detached from its axis, on account of that the said auto-rickshaw turned turtle and Parbatbhai lost his life. Therefore, heirs and legal representatives of the deceased filed a petition claiming an amount of Rs.1,00,000/- by way of compensation.

2.1 In the said petition, after hearing the parties, the Authority passed the judgment and order which is under challenge in this appeal.

3.0 Learned Advocate for the appellant has submitted that the Authority has committed an error in not considering the fact that the vehicle involved in the alleged accident was sold by present opponent No.5 to present opponent No. 6. He has further submitted that the Authority ought to have held that since the vehicle in question was sold, the appellant is not liable to satisfy the claim. Hence, the impugned judgment

and order deserves to be quashed and set aside.

4.0 Heard. The issue involved in this appeal is squarely covered by a decision of the Apex Court in the case of ***"G. Govindan v. New India Assurance Co. Ltd. and others"*** reported in 1999 A.C.J. pg. 781. In that case, the Transferee had purchased the Bus from the Transferor, but, intimation of the same was not given to the Insurer as required u/s. 103-A of the Act. The Claims Tribunal recorded a finding that after the date of the accident and knowing that the Transferor had sold the bus in question to the Transferee, the Insurer had received the premium for the subsequent periods. The Apex Court, after considering the facts of the case, held that a victim or the legal representatives of the victim could not be denied compensation by the Insurer on the ground that the policy was not transferred in the name of the Transferee. The aforesaid principle has been followed in a recent decision of the Apex Court in the case of "***United India Insurance Co. Ltd. v. Tilak Singh and others"***

reported in 2006 A.C.J. 1441.

4.1 It was the case of the appellant before the Authority that, since the vehicle in question was sold by present opponent No.5 to present opponent No.6, it is not liable to satisfy the claim in question. However, the Authority had not believed the said story of the appellant on the ground that on the date of accident in question the said auto-rickshaw stood registered in the name of opponent No.5. Therefore, on the date of the accident, appellant No.5 was the owner of the vehicle in question. Moreover, the appellant Insurance Company had continued to receive the amount of premium. Hence, the fact that the appellant Insurance Company did not have the knowledge about the “transfer” of the vehicle is not established. In that view of the matter, I am of the opinion that the Authority has rightly held the appellant liable to satisfy the claim. I am in complete agreement with the reasonings given and findings arrived at by the Authority, and therefore, find no reason to interfere in

this appeal.

5.0 In the result, the appeal stands dismissed. No order as to costs.

(K.S. Jhaveri,J.)

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